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8 IN THE UNITED STATES DISTRICT COURT  
9 FOR THE EASTERN DISTRICT OF CALIFORNIA  
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11 LIZZIE MCCAIN,

No. CIV.S-05-0252 DFL DAD PS

12 Plaintiff,

13 v.

FINDINGS AND RECOMMENDATIONS

14 ONIKA E. MCGRIFF,  
15 et al.,

Defendants.

16 \_\_\_\_\_/  
17 Plaintiff Lizzie McCain is proceeding in this action pro se  
18 and in forma pauperis pursuant to 28 U.S.C. § 1915. The matter was  
19 referred to a United States Magistrate Judge by Local Rule 72-  
20 302(c)(21) pursuant to 28 U.S.C. § 636(b)(1).

21 By order filed October 20, 2005, plaintiff's complaint was  
22 dismissed and twenty days leave to amend was granted. Plaintiff has  
23 timely filed an amended complaint.

24 The somewhat difficult to decipher amended complaint  
25 indicates that plaintiff is attempting to pursue a housing  
26 discrimination action against an apartment complex, Deliverance

1 Temple Apartments, and its management. However, the amended  
2 complaint alleges that the parties are located in Contra Costa  
3 County, which is within the Northern District of California, and that  
4 all of the events giving rise to this action occurred there. (See  
5 Am. Compl. paras. 2, 4 & 5.) Therefore, "a substantial part of the  
6 events or omissions giving rise to the claim occurred" in the  
7 Northern District. See 28 U.S.C. § 1391(b)(2).

8 A district court may dismiss any civil action filed in the  
9 wrong district, or if it be in the interest of justice, transfer the  
10 case to the correct district. See 28 U.S.C. § 1406(a); Oaks of  
11 Woodlake Phase III, Ltd. v. Hall, Bayoutree Assocs., Ltd. (In re  
12 Hall, Bayoutree, Assocs., Ltd.), 939 F.2d 802, 805 (9th Cir. 1991).

13 The undersigned will recommend that this action be dismissed, as  
14 opposed to transferred, for several reasons. First, while the  
15 initial complaint listed Lizzie McCain as the sole plaintiff in this  
16 action, the amended complaint purports to add numerous other  
17 plaintiffs, including Lizzie McCain's husband, children and  
18 grandchildren. However, none of these other plaintiffs have signed  
19 the complaint and a pro se litigant such as Ms. McCain cannot  
20 represent another pro se litigant. Further, to the extent that any  
21 of the family members are minors, Ms. McCain has not taken the  
22 necessary steps to be appointed guardian ad litem so that she may  
23 proceed on their behalf.

24 Additionally, the amended complaint, while making several  
25 general references to discrimination based on race, color, marital  
26 status and family status, repeatedly alleges that defendants have

1 violated numerous provisions of the California Civil and Government  
2 Codes with respect to housing. Breach of contract and intentional  
3 infliction of emotion distress also are alleged. No violation of  
4 federal law is alleged. Therefore, it appears that this action is  
5 more properly pursued in state court.

6 Finally, the events alleged in the complaint occurred  
7 during 2000 and 2001. Thus, to the extent plaintiff is attempting to  
8 bring an action under the federal Fair Housing Act, this action,  
9 which was initiated with the filing of the complaint on February 8,  
10 2005, would appear to be untimely in light of the applicable two-year  
11 statute of limitations. See 42 U.S.C. § 3613(a)(1)(A).

12 For all of these reasons, it would not be in the interest  
13 of justice to transfer this action to the Northern District. Rather,  
14 IT IS HEREBY RECOMMENDED that this action be dismissed without  
15 prejudice.

16 These findings and recommendations are submitted to the  
17 United States District Judge assigned to the case, pursuant to the  
18 provisions of 28 U.S.C. § 636(b)(1). Within twenty (20) days after  
19 being served with these findings and recommendations, plaintiff may  
20 file written objections with the court. Such a document should be  
21 captioned "Objections to Magistrate Judge's Findings and  
22 Recommendations." Plaintiff is advised that failure to file  
23 objections within the specified time may waive the right to appeal

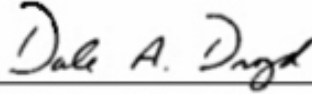
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the District Court's order. See Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

DATED: November 7, 2005.



DALE A. DROZD  
UNITED STATES MAGISTRATE JUDGE

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